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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,459	12/08/2003	Mark J. Levine	930009-2010	2911

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EXAMINER	
PIZIALI, ANDREW T	
ART UNIT	PAPER NUMBER
1794	

MAIL DATE	DELIVERY MODE
07/03/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/730,459	LEVINE ET AL.	
	Examiner	Art Unit	
	Andrew T. Piziali	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05 May 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-13 and 23-29* is/are pending in the application.

4a) Of the above claim(s) *3,5,9-12,24,28 and 29* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2,4,6-8,13,23 and 25-27* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *6/14/04 & 3/23/06* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. The amendment filed on 5/5/2008 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1, 2, 4, 6-8, 13, 23 and 25-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claimed support fabric is in a continuous loop or made endless. The claims are indefinite because the distinction between a continuous loop fabric and an endless fabric is unclear.

Claim Rejections - 35 USC § 102/103

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 1, 2, 4, 6-8, 13, 23 and 25-27 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over USPN 5,857,497 to Gaisser.

Gaisser discloses a support fabric comprising flat filaments and wherein said support fabric is endless (see entire document including column 4, lines 30-39 and column 6, lines 42-50).

Although Gaisser does not specifically mention using the fabric as claimed, but it appears that the fabric is capable of being used as claimed. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Regarding claims 2, 4 and 6, all or some of the MD and/or the CD filaments may be flat filaments (column 6, lines 42-50).

Regarding claim 7, the support fabric is a multilayer weave (paragraph bridging columns 2 and 3).

Regarding claim 8, the layers may have different filament shapes (column 6, lines 25-40).

Regarding claim 13, the permeability is greater than 350 cfm (column 4, lines 50-60).

Regarding claims 23 and 25-27, Gaisser does not specifically mention how or when in the process the filaments are made flat, but absent a showing to the contrary, it is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed article because the end result is a fabric comprising flattened filaments.

Claim Rejections - 35 USC § 103

7. Claims 1, 2, 4, 6, 13, 23 and 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,142,752 to Greenway in view of USPN 4,345,730 to Leuvelink.

Greenway discloses hydroentangling devices in combination with endless conveyor belts (see entire document including column 4, lines 33-46 and Figure 1). Greenway is silent with regards to specific conveyor belt materials, therefore, it would have been necessary and thus obvious to look to the prior art for conventional conveyor belt materials. Leuvelink provides this conventional teaching showing that it is known in the conveyor belt art to use a fabric comprising flat filaments (see entire document including column 4, line 63 through column 5, line 23). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the endless conveyor belts from the flat filament fabric of Leuvelink, motivated by the expectation of successfully practicing the invention of Greenway. Although Leuvelink does not specifically mention using the fabric as claimed, but it appears that the fabric is capable of being used as claimed. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Regarding claims 2, 4 and 6, Leuvelink discloses that the flat filaments may include a combination of the MD and CD filaments (column 5, lines 19-23 and Figure 7).

Regarding claim 13, Leuvelink does not specifically mention the permeability of the fabric, but considering that the fabric disclosed by Leuvelink is substantially identical to the specification fabric (spiral link fabric comprising flat filaments), and considering that the applicant discloses that such a fabric inherently possesses the claimed permeability (see page 11, lines 8 and 9 of the current specification), it appears that the fabric inherently possesses the claimed permeability.

Regarding claims 23 and 25-27, Leuvelink does not specifically mention how or when in the process the filaments are made flat, but absent a showing to the contrary, it is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed article because the end result is a fabric comprising flattened filaments.

8. Claims 1, 2, 4, 6, 23 and 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,883,022 to Elsener in view of any one of USPN 3,884,630 to Schwartz or USPN 4,104,814 to Whight.

Elsener discloses a fabric comprising flat filaments (see entire document including column 3, lines 40-47). Elsener discloses that the fabric is preferably a roller hand towel (column 3, lines 56-62). Elsener does not appear to specifically disclose that the roller hand towel is in a continuous loop or made endless, but Schwartz and Whight each disclose that it is known in the roller hand towel art to use an endless fabric (see entire documents including column 1, lines 4-23 and column 2, lines 43-45 of Schwartz and column 1, lines 4-45 of Whight). It would have been obvious to one having ordinary skill in the art at the time the

invention was made to make the fabric in any suitable shape, such as an endless fabric, because it is within the general skill of a worker in the art to select a known shape on the basis of its suitability and desired characteristics.

Elsener does not specifically mention using the fabric as claimed, but it appears that the fabric is capable of being used as claimed. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Regarding claims 2 and 4, Elsener discloses that at least one direction (CD or MD) of filaments may include non-flat filaments (column 3, lines 40-47).

Regarding claim 6, Elsener discloses that the flat filaments may include a combination of the MD and CD filaments (column 3, lines 40-47).

Regarding claims 23 and 25-27, Elsener discloses that the filaments of the fibers may be rectangular (flat) prior to weaving the fabric (column 3, lines 40-47). Absent a showing to the contrary, it is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed article.

9. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,883,022 to Elsener in view of any one of USPN 3,884,630 to Schwartz or USPN 4,104,814 to Whight as applied to claims 1, 2, 4, 6, 23 and 25-27 above, and further in view of USPN 5,167,263 to Kelen.

Schwartz discloses that roller hand towels rapidly deteriorate (column 1, lines 24-33). Kelen discloses that it is known in high strength woven fabric applications to use a double weave fabric (see entire document including column 1, lines 5-56). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the woven fabric in any suitable weave construction, such as a double weave, motivated by a desire to increase the durability of the fabric and because it is within the general skill of a worker in the art to select a known weave construction on the basis of its suitability and desired characteristics.

10. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,883,022 to Elsener in view of any one of USPN 3,884,630 to Schwartz or USPN 4,104,814 to Whight as applied to claims 1, 2, 4, 6, 23 and 25-27 above, and further in view of USPN 5,246,772 to Manning.

Elsener is silent with regards to specific fabric permeability, therefore, it would have been necessary and thus obvious to look to the prior art for a conventional permeability. Manning provides this conventional teaching showing that it is known in the art to construct a towel with a permeability of greater than 350 cfm (see entire document including column 1, lines 7-21 and the Example). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to towel with a permeability of greater than 350 cfm, motivated by the expectation of successfully practicing the invention of Elsener.

Response to Arguments

11. Applicant's arguments filed 5/5/2008 have been considered but are mostly moot in view of the new grounds of rejection.

The applicant asserts Leuvelink has no relation to nonwoven production or the belts used in nonwoven production. Applicant's argument is not persuasive because a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew T. Piziali whose telephone number is (571) 272-1541. The examiner can normally be reached on Monday-Friday (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571) 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Andrew T Piziali/
Primary Examiner, Art Unit 1794